

DOCKET NO.

12-233

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FILED/ACCEPTED

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Federal Communications Commission  
Office of the Secretary

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October 4, 2012

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20534

Re: WC Docket No. 12-233, WCB/Pricing No. 12-09

Dear Ms. Dortch:

Attached is the redacted version of the direct case of the National Exchange Carrier Association, Inc. (NECA), filed in response to the Wireline Competition Bureau's 2012 *Designation Order*.<sup>1</sup> NECA's direct case is also being filed pursuant to the *Protective Order* issued in this proceeding.<sup>2</sup> Attachment A to this letter contains detailed information regarding NECA's request for confidential treatment. In accordance with the *Protective Order*, each page of this filing has been marked:

REDACTED – FOR PUBLIC INSPECTION

Sincerely,

Enclosures

<sup>1</sup> *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, WCB Pricing No. 12-09, Order Designating Issues for Investigation, DA 12-1430 (rel. Aug. 31, 2012) (*Designation Order*).

<sup>2</sup> *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, WCB Pricing No. 12-09, Protective Order, DA 12-1518 (rel. Sept. 21, 2012) (*Protective Order*).

**Request for Confidential Treatment**

This direct case filing includes data required by the Commission to monitor exchange carrier compliance with rules regarding the revenue recovery mechanism for rate-of-return carriers adopted in the *USF/ICC Transformation Order*.<sup>1</sup> This data is submitted in response to the Wireline Competition Bureau's (*Bureau*) *Designation Order*.<sup>2</sup> It supports NECA's calculation of each Telephone Company's Eligible Recovery, Access Recovery Charge (ARC) rates and revenues, and Connect America Fund Intercarrier Compensation (CAF ICC) support. NECA seeks confidential treatment pursuant to the *Protective Order* issued in this proceeding<sup>3</sup> for data contained in the direct case.

Accordingly, the confidential data files on CD-ROM have been marked: **CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-233, WCB/PRICING NO. 12-09 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION** and filed with the Secretary's Office. Two CD-ROM copies of a redacted version of this filing marked: **REDACTED – FOR PUBLIC INSPECTION** have also been filed with the Secretary's Office, as well as filed in WC Docket No. 12-233 using the Electronic Comment Filing System (ECFS). The un-redacted filing was also delivered to Ms. Robin Cohn, Pricing Policy Division, Wireline Competition Bureau.

Pursuant to the terms of the *Protective Order*, signed Acknowledgements<sup>4</sup> requesting access to the confidential information should be sent to the attention of Richard A. Askoff, Executive Director – Regulatory, via email to [raskoff@neca.org](mailto:raskoff@neca.org) or via facsimile at 973.599.6636. NECA will provide CD-ROMs of the un-redacted files to Reviewing Parties. NECA designates 1634 I (Eye) St., NW, Suite 510, Washington, D.C. 20006 as its public inspection location.

Notwithstanding the *Protective Order*, the information provided in the confidential data files is entitled to confidential, non-public treatment under the Freedom of Information Act (FOIA) and related provisions of the Commission's rules.<sup>5</sup> The information satisfies the requirement of

<sup>1</sup> See 47 C.F.R. § 51.919. The Commission stated that monitoring information “may be filed under protective order and will be treated as confidential.” *Connect America Fund*, WC Docket No. 10-90, *et. al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ¶ 921 (*USF/ICC Transformation Order*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10<sup>th</sup> Cir. filed Dec. 8. 2011) .

<sup>2</sup> *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, WCB Pricing No. 12-09, Order Designating Issues for Investigation, DA 12-1430 (rel. Aug. 31, 2012) (*Designation Order*).

<sup>3</sup> *Investigation of Certain 2012 Annual Access Tariffs*, WC Docket No. 12-233, WCB Pricing No. 12-09, Protective Order, DA 12-1518 (rel. Sept. 21, 2012) (*Protective Order*).

<sup>4</sup> *Id.* ¶ 3.

<sup>5</sup> 47 C.F.R. §§ 0.457 and 0.459; 5 U.S.C. § 552, *et. seq.* Section 0.457(d)(1)(iii) specifically identifies information submitted in connection with audits, investigations, and examination of

FOIA Exemption 4 (trade secrets or commercial/financial information). The information provided in this filing may also be protected under additional exemptions from disclosure under FOIA.

NECA submits the following information pursuant to section 0.459 in support of its request for confidential treatment of the data in this file.

- Identification of the specific information for which confidential treatment is sought:  
NECA seeks confidential treatment for certain information in the following files:

NECA\_2012DirectCase\_100412\_Stamped.pdf  
 NECA\_2012DirectCase\_TRPCAFICC\_Stamped.xls  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol1.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol2.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol3.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol4.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol5.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol6.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol7.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol8.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol9.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol10.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol11.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol12.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol13.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol14.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol15.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol16.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol17.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol18.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol19.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol20.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol21.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol22.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol23.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol24.pdf  
 NECA\_2012DirectCase\_ECEExpl\_Stamped\_Vol25.pdf

These files contain confidential and proprietary financial information of NECA Traffic Sensitive (TS) tariff participants. This information includes actual revenues, expenses, and demand for the 2011 fiscal year; projections of revenue requirements and demand for the 2012-2013 test period; and the product of calculations made using the confidential

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records pursuant to 47 U.S.C. 220 as material that has been accepted by the Commission on a confidential basis pursuant to 5 U.S.C. 552(b)(4).

data. The data includes interstate access information at a more granular level than provided to the Commission in previous tariff filings, as well new data on intrastate access, reciprocal compensation, VoIP, and fees never before provided to the Commission. The data is quantified at the study area and/or exchange area level and was used by NECA to calculate each exchange carrier's Eligible Recovery and ARC rates.

- Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission:

This information is filed with the Secretary's Office in conjunction with NECA's response to the Bureau's *Designation Order* investigating NECA Tariff FCC No. 5 Annual Access Charge Filing, Transmittal No. 1347.

- Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged:

The information in the files contains sensitive study area-specific and exchange area-specific information for NECA TS tariff participants. At the study area and exchange area level, the information is granular and highly confidential to the reporting TS tariff participants. These financial data are treated as confidential trade secrets by TS tariff participants.

- Explanation of the degree to which the information concerns a service that is subject to competition:

Rural telephone service has historically lent itself to "cherry picking" by competitors that choose to serve only the low cost areas within a study area. Detailed information about revenues, expenses, and demand will give prospective competitors access to commercially sensitive information about market strategies employed by NECA pool participants, allowing them to gain an unfair competitive advantage.

- Identification of any measures taken by the submitting party to prevent unauthorized disclosure:

The information provided in the files is made available only to NECA representatives on a need- to- know basis. Any public information is only made available on an aggregate basis.

- Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties:

The information is not publicly available.

- Justification of the period during which the submitting party asserts that material should not be available for public disclosure:

NECA requests that all member company data provided be treated as confidential indefinitely. Because of the sensitive nature of the data, it would not be appropriate for public disclosure at any time in the foreseeable future.

The *Protective Order* places additional requirements on Reviewing Parties to destroy or return all confidential information, as well as copies and derivative materials, within two weeks after final resolution of this proceeding.<sup>6</sup>

- Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidential treatment should be granted:

NECA is submitting this information on behalf of the member ILECs that participate in NECA's pools and tariff. The Commission should take care not to deprive those ILECs of the opportunity to speak for themselves in the event of a FOIA request for access to data. NECA requests that the Commission notify carriers of any FOIA request and allow them to be given a reasonable opportunity to file detailed information supporting continued confidential treatment of their respective data.

Accordingly, NECA requests confidential treatment of the member data provided in its direct case pursuant to section 0.457 and 0.459 of the Commission's rules and paragraph 5 of the *Protective Order*.

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<sup>6</sup> *Protective Order* ¶ 18.